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DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION

15 MAR 10 AM 10:30

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 5, 2015

Gerry Newcombe – Director County of San Bernardino – Department of Public Works 825 East Third Street San Bernardino, CA 94215	Second District Supervisor Janice Rutherford San Bernardino County Board of Supervisors County Government Center 385 N. Arrowhead Ave., Fifth Floor San Bernardino, CA 92415-0110
Arthur L. Rivera – Deputy Director Solid Waste Management Division County of San Bernardino – Department of Public Works 222 W. Hospitality Lane, Second Floor San Bernardino, CA 94215-0017	Third District Supervisor James Ramos San Bernardino County Board of Supervisors County Government Center 385 N. Arrowhead Ave., Fifth Floor San Bernardino, CA 92415-0110
David Doublet – Chief of Engineering Solid Waste Management Division County of San Bernardino – Department of Public Works 222 W. Hospitality Lane, Second Floor San Bernardino, CA 94215-0017	Fourth District Supervisor Curt Hagman San Bernardino County Board of Supervisors County Government Center 385 N. Arrowhead Ave., Fifth Floor San Bernardino, CA 92415-0110
First District Supervisor Robert A. Lovingood San Bernardino County Board of Supervisors County Government Center 385 N. Arrowhead Ave., Fifth Floor San Bernardino, CA 92415-0110	Fifth District Supervisor Josie Gonzales San Bernardino County Board of Supervisors County Government Center 385 N. Arrowhead Ave., Fifth Floor San Bernardino, CA 92415-0110
Robert Bradford or Current Facility Manager Colton Sanitary Landfill 850 West Tropica Ranch Road Colton, CA 92324	

Notice of Violations and Intent to File Suit

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act

Dear Messrs Newcombe, Rivera, Doublet, Lovingood, Bradford, Ramos, and Hagman; and Mmes Rutherford and Gonzales:

I am writing on behalf of the Center for Community Action and Environmental Justice (“CCA EJ”) in regard to violations of the Clean Water Act (“Act”) that CCA EJ believes are occurring at the County of San Bernardino’s Department of Public Works’ Solid Waste Management Division’s Colton Sanitary Landfill, a facility located at 850 West Tropica Rancho Road in Colton, California (“Facility”). CCA EJ is a non-profit public benefit corporation dedicated to working with communities to advocate for environmental justice and pollution prevention. CCA EJ has members living in the community adjacent to the Facility and the Santa Ana River Watershed. CCA EJ and its members are deeply concerned with protecting the environment in and around their communities, including the Santa Ana River Watershed. This letter is being sent to you as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as “the County”).

This letter addresses the County’s unlawful discharge of pollutants from the Facility directly into the Santa Ana River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA S000001, California State Water Quality Control Board (“State Board”) Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter “General Permit”).¹ The WDID identification number for the Facility listed on documents submitted to the Santa Ana Regional Water Quality Control Board (“Regional Board”) is 8 36I005252. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“EPA”) and the State in which the violations occur. As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, the County is hereby placed on formal notice by CCA EJ that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CCA EJ intends to file suit in federal court against the County under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

¹ On April 1, 2014, the State Board reissued the General Permit, continuing its mandate that industrial facilities implement the best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”) and, in addition, establishing numeric action levels mandating additional pollution control efforts. State Board Order 2014-0057-DWQ (“2015 General Permit”). The new permit, however, does not go into effect until July 1, 2015. Until that time, the current General Permit remains in full force and effect.

I. Background.

On April 9, 1992, the State Board accepted the County's Notice of Intent to Comply With the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI"). In its NOI, the County has certified that the Facility is classified under SIC Code 4953. On information and belief, CCAEJ alleges that the Facility discharges storm water through at least nine storm water outfalls. CCAEJ is informed and believes that all storm water discharged from the site is associated with industrial activity or, alternatively, includes commingled storm water from both industrial and non-industrial activity. The Facility's outfalls discharge directly into Reach 4 of the Santa Ana River. Reach 4 of the Santa Ana River has been identified by the Regional Board and State Board as impaired by pathogens.

The Regional Board has identified beneficial uses of the Santa Ana River, and established water quality standards for it in the "Water Quality Control Plan for the Santa Ana River Basin (Region 8)", generally referred to as the Basin Plan. *See* http://www.swrcb.ca.gov/rwqcb8/water_issues/programs/basin_plan/index.shtml. The beneficial uses of these waters include, among others, groundwater recharge, water contact recreation, non-contact water recreation, wildlife habitat, and warm freshwater habitat.

The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." *Id.* at 3-3. Contact recreation use includes fishing and wading. *Id.* at 3-2. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of the Santa Ana River for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that "[t]oxic substances shall not be discharged at levels that will bioaccumulate in aquatic resources to levels which are harmful to human health." *Id.* at 4-17. The Basin plan includes a narrative oil and grease standard which states that "[w]aste discharges shall not result in deposition of oil, grease, wax, or other material in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses." *Id.* at 4-15. The Basin Plan includes a narrative suspended and settleable solids standard which states that "waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses..." *Id.* at 4-16. The Basin Plan provides that "[t]he pH of inland surface waters shall not be raised above 8.5 or depressed below 6.5..." *Id.* at 4-15. The Basin Plan contains a narrative floatables standard which states that "[w]aste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses." *Id.* at 4-11. The Basin Plan contains a narrative color standard which states that "[w]aste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affect beneficial uses. The natural color of fish, shellfish or other inland surface water resources used for human consumption shall not be impaired." *Id.* at 4-10. The

Basin Plan provides that “[a]ll inland surface waters of the region shall be free of changes in turbidity which adversely affect beneficial uses.” *Id.* at 4-18.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).² The following benchmarks have been established for pollutants discharged by the County: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100 mg/L; total organic carbon (“TOC”) – 110 mg/L; oil and grease (“O&G”) – 15 mg/L; iron – 1.0 mg/L; and nitrate plus nitrite as nitrogen (“N+N”) – 0.68 mg/L. The 2015 General Permit includes Numeric Action Levels (“NALs”) which generally track the benchmark levels. When the 2015 General Permit takes effect, the following annual NALs will apply for pollutants discharged by the County: total suspended solids (“TSS”) – 100 mg/L; total organic carbon (“TOC”) – 110 mg/L; oil and grease (“O&G”) – 15 mg/L; iron – 1.0 mg/L; and nitrate plus nitrite as nitrogen (“N+N”) – 0.68 mg/L. An exceedance of an average NAL occurs when the average of all analytical results from all samples taken at a facility during a reporting year³ for a given parameter exceeds an annual NAL value. When the 2015 General Permit takes effect, the following instantaneous NALs will apply for pollutants discharged by the County: TSS – 400 mg/L; O&G – 25 mg/L; pH – less than 6.0, greater than 9.0. An exceedance of an instantaneous NAL occurs when two or more analytical results from samples taken for any parameter within a reporting year exceed the instantaneous maximum NAL value (for TSS and O&G), or are outside of the instantaneous maximum NAL range (for pH).

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit not Subjected to BAT/BCT

The County has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

² The Benchmark Values can be found at:
http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf and
<http://cwea.org/p3s/documents/multi-sectorrev.pdf> (Last accessed on March 5, 2015).

³ A reporting year is defined at July 1 – June 30.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2). As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

The County has discharged and continues to discharge storm water with unacceptable levels of TSS, TOC, iron, N+N, and other pollutants in violation of the General Permit. The County's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained concentrations of pollutants in excess of numeric water quality standards established in the Basin Plan and the California Toxics Rule and has thus violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Permit.

Date	Parameter	Observed Conditions	Basin Plan Water Quality Standard	Outfall (as identified by the Facility)
12/13/2012	Narrative	Discolored	Basin Plan at 4-10	Discharge from north slopes
11/9/2012	Narrative	Discolored	Basin Plan at 4-10	Discharge from north slopes
11/9/2012	Narrative	Cloudy and discolored	Basin Plan at 4-16; Basin Plan at 4-10	Discharge from top deck and south slopes
10/12/2012	Narrative	Discolored and floating objects	Basin Plan at 4-10; Basin Plan at 4-11	Discharge from top deck and south slopes

12/13/2011	Narrative	Discolored (light brown)	Basin Plan at 4-10	Autosampler located at the northern boundary
11/21/2011	Narrative	Discolored (light brown)	Basin Plan at 4-10	Autosampler located at the southern boundary
10/6/2011	Narrative	Discolored (light brown)	Basin Plan at 4-10	Autosampler located at the southern boundary
10/5/2011	Narrative	Discolored (light brown)	Basin Plan at 4-10	Autosampler located at the northern boundary
11/8/2010	Narrative	Turbid and discolored	Basin Plan at 4-18; Basin Plan at 4-10	Discharge from landfill deck and northern slopes
10/20/2010	Narrative	Turbid and discolored	Basin Plan at 4-18; Basin Plan at 4-10	Discharge from landfill deck and southern slopes
10/20/2010	Narrative	Turbid and discolored	Basin Plan at 4-18; Basin Plan at 4-10	Discharge from landfill deck and northern slopes
10/7/2010	Narrative	Turbid and discolored	Basin Plan at 4-18; Basin Plan at 4-10	Discharge from landfill deck and southern slopes

The information in the above table reflects data gathered from the County's self-monitoring during the 2010-2011, 2011-2012, 2012-2013, and 2013-14 wet seasons. CCAEJ alleges that during each of those wet seasons and continuing through today, the County has discharged storm water contaminated with pollutants at levels or observations that exceed or violate one or more applicable water quality standards, including but not limited to each of the following:

- Color – Water discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affect beneficial uses. (Basin Plan at 4-10)
- Floatables – Waste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses. (Basin Plan at 4-11)
- Suspended/Settleable Solids – Waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses. (Basin Plan at 4-16)
- Turbidity – All inland surface waters of the region shall be free of changes in turbidity which adversely affect beneficial uses. (Basin Plan at 4-18)

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Permit.

Table A – Exceedances of Benchmark Values

Date	Parameter	Observed Concentration	EPA Benchmark Value	Location (as identified by the Facility)
4/28/2014	Iron	1.2 mg/L	1.0 mg/L	AutoSampler at Southern Flume
2/28/2014	Total Suspended Solids	2,000 mg/L	100 mg/L	AutoSampler at Southern Flume
2/28/2014	Iron	1.3 mg/L	1.0 mg/L	AutoSampler at Southern Flume
2/28/2014	Nitrate + Nitrite Nitrogen	4.6 mg/L	0.68 mg/L	AutoSampler at Southern Flume
11/22/2013	Total Suspended Solids	1,600 mg/L	100 mg/L	AutoSampler at Southern Flume
11/22/2013	Iron	190 mg/L	1.0 mg/L	AutoSampler at Southern Flume
11/22/2013	Nitrate + Nitrite Nitrogen	36 mg/L	0.68 mg/L	AutoSampler at Southern Flume
11/21/2013	Total Suspended Solids	2,000 mg/L	100 mg/L	AutoSampler at Southern Flume
11/21/2013	Iron	84 mg/L	1.0 mg/L	AutoSampler at Southern Flume
11/21/2013	Nitrate + Nitrite Nitrogen	6.5 mg/L	0.68 mg/L	AutoSampler at Southern Flume
10/10/2013	Total Suspended Solids	12,000 mg/L	100 mg/L	AutoSampler at Southern Flume
10/10/2013	Total Organic Carbon	340 mg/L	110 mg/L	AutoSampler at Southern Flume
10/10/2013	Iron	320 mg/L	1.0 mg/L	AutoSampler at Southern Flume
10/10/2013	Nitrate + Nitrite Nitrogen	36 mg/L	0.68 mg/L	AutoSampler at Southern Flume
12/13/2012	Total Suspended Solids	290 mg/L	100 mg/L	AutoSampler at Southern Flume
12/13/2012	Iron	130 mg/L	1.0 mg/L	AutoSampler at Southern Flume
12/13/2012	Nitrate + Nitrite Nitrogen	3.6 mg/L	0.68 mg/L	AutoSampler at Southern Flume
11/9/2012	Total Suspended Solids	420 mg/L	100 mg/L	AutoSampler at

				Southern Flume
11/9/2012	Total Organic Carbon	310 mg/L	110 mg/L	AutoSampler at Southern Flume
11/9/2012	Iron	30 mg/L	1.0 mg/L	AutoSampler at Southern Flume
11/9/2012	Nitrate + Nitrite Nitrogen	20 mg/L	0.68 mg/L	AutoSampler at Southern Flume
11/9/2012	Total Suspended Solids	2,200 mg/L	100 mg/L	AutoSampler at Southern Flume
11/9/2012	Iron	5.1 mg/L	1.0 mg/L	AutoSampler at Southern Flume
11/9/2012	Nitrate + Nitrite Nitrogen	10 mg/L	0.68 mg/L	AutoSampler at Southern Flume
10/12/2012	Total Suspended Solids	1,600 mg/L	100 mg/L	AutoSampler at Southern Flume
10/12/2012	Iron	160 mg/L	1.0 mg/L	AutoSampler at Southern Flume
10/12/2012	Nitrate + Nitrite Nitrogen	16 mg/L	0.68 mg/L	AutoSampler at Southern Flume
12/13/2011	Total Suspended Solids	56,000 mg/L	100 mg/L	AutoSampler at Southern Flume
12/13/2011	Iron	1,100 mg/L	1.0 mg/L	AutoSampler at Southern Flume
12/13/2011	Nitrate + Nitrite Nitrogen	3.2 mg/L	0.68 mg/L	AutoSampler at Southern Flume
11/21/2012	Total Suspended Solids	640 mg/L	100 mg/L	AutoSampler at Southern Flume
11/21/2012	Iron	40 mg/L	1.0 mg/L	AutoSampler at Southern Flume
10/6/2011	Total Suspended Solids	10,000 mg/L	0.68 mg/L	AutoSampler at Southern Flume
10/6/2011	Iron	140 mg/L	1.0 mg/L	AutoSampler at Southern Flume
10/6/2011	Nitrate + Nitrite Nitrogen	12 mg/L	0.68 mg/L	AutoSampler at Southern Flume
10/5/2011	Total Suspended Solids	800 mg/L	100 mg/L	AutoSampler at Southern Flume
10/5/2011	Total Organic Carbon	180 mg/L	110 mg/L	AutoSampler at Southern Flume
10/5/2011	Iron	140 mg/L	1.0 mg/L	AutoSampler at Southern Flume
10/5/2011	Nitrate + Nitrite Nitrogen	25 mg/L	0.68 mg/L	AutoSampler at Southern Flume
11/8/2010	Total Suspended Solids	720 mg/L	100 mg/L	AutoSampler at

				Southern Flume
11/8/2010	Iron	170 mg/L	1.0 mg/L	AutoSampler at Southern Flume
11/8/2010	Nitrate + Nitrite Nitrogen	12 mg/L	0.68 mg/L	AutoSampler at Southern Flume
10/20/2010	Iron	1.5 mg/L	1.0 mg/L	AutoSampler at Southern Flume
10/20/2010	Nitrate + Nitrite Nitrogen	9 mg/L	0.68 mg/L	AutoSampler at Southern Flume
10/20/2010	Total Suspended Solids	22,000 mg/L	100 mg/L	AutoSampler at Southern Flume
10/20/2010	Iron	770 mg/L	1.0 mg/L	AutoSampler at Southern Flume
10/20/2010	Nitrate + Nitrite Nitrogen	11 mg/L	0.68 mg/L	AutoSampler at Southern Flume
10/7/2010	Total Suspended Solids	240 mg/L	100 mg/L	AutoSampler at Southern Flume
10/7/2010	Iron	7.9 mg/L	1.0 mg/L	AutoSampler at Southern Flume

Table B – Exceedances of NALs

Reporting Year	Parameter	Observed Concentration(s)	NAL	Location (as identified by the Facility)
7/1/13 – 6/30/14 reporting year	Total Suspended Solids	3,529.8 mg/L	100 mg/L (average)	AutoSampler at Southern Flume
7/1/13 – 6/30/14 reporting year	Total Suspended Solids	2,000 mg/L / 1,600 mg/L / 2,000 mg/L / 12,000 mg/L	400 mg/L (instantaneous)	AutoSampler at Southern Flume
7/1/13 – 6/30/14 reporting year	Iron	119.3 mg/L	1.0 mg/L (average)	AutoSampler at Southern Flume
7/1/13 – 6/30/14 reporting year	Nitrate + Nitrite Nitrogen	16.63 mg/L	0.68 mg/L (average)	AutoSampler at Southern Flume
7/1/12 – 6/30/13 reporting	Total Suspended Solids	1,127.5 mg/L	100 mg/L (average)	AutoSampler at Southern Flume

year				
7/1/12 – 6/30/13 reporting year	Total Suspended Solids	420 mg/L / 2,200 mg/L / 1,600 mg/L /	400 mg/L (instantaneous)	AutoSampler at Southern Flume
7/1/12 – 6/30/13 reporting year	Iron	81.3 mg/L	1.0 mg/L (average)	AutoSampler at Southern Flume
7/1/12 – 6/30/13 reporting year	Nitrate + Nitrite Nitrogen	12.4 mg/L	0.68 mg/L (average)	AutoSampler at Southern Flume
7/1/11 – 6/30/12 reporting year	Total Suspended Solids	16,860 mg/L	100 mg/L (average)	AutoSampler at Southern Flume
7/1/11 – 6/30/12 reporting year	Total Suspended Solids	56,000 mg/L / 640 mg/L / 10,000 mg/L / 800 mg/L	400 mg/L (instantaneous)	AutoSampler at Southern Flume
7/1/11 – 6/30/12 reporting year	Iron	355 mg/L	1.0 mg/L (average)	AutoSampler at Southern Flume
7/1/11 – 6/30/12 reporting year	Nitrate + Nitrite Nitrogen	10.1 mg/L	0.68 mg/L (average)	AutoSampler at Southern Flume
7/1/10 – 6/30/11 reporting year	Total Suspended Solids	5,741.8 mg/L	100 mg/L (average)	AutoSampler at Southern Flume
7/1/10 – 6/30/11 reporting year	Total Suspended Solids	720 mg/L / 22,000 mg/L /	400 mg/L (instantaneous)	AutoSampler at Southern Flume
7/1/10 – 6/30/11 reporting year	Iron	237.4 mg/L	1.0 mg/L (average)	AutoSampler at Southern Flume
7/1/10 – 6/30/11 reporting year	Nitrate + Nitrite Nitrogen	8.0 mg/L	0.68 mg/L (average)	AutoSampler at Southern Flume

The information in the above tables reflects data gathered from the County's self-monitoring during the 2009-2010, 2010-2011, 2011-2012, 2012-2013 wet seasons. CCAEJ alleges that during each of those rainy seasons and continuing through today, the County has discharged storm water contaminated with pollutants at levels that exceed one or more applicable EPA Benchmarks, including but not limited to each of the following:

- Total Suspended Solids – 100 mg/L
- Total Organic Carbon – 110 mg/L
- Iron – 1.0 mg/L
- Nitrate + Nitrite as Nitrogen – 0.68 mg/L

CCAIEJ's investigation, including its review of the County's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, the EPA's benchmark values, and the NALs that take effect on July 1, 2015 indicates that the County has not implemented BAT and BCT at the Facility for its discharges of TSS, TOC, iron, N+N, and other un-monitored pollutants in violation of Effluent Limitation B(3) of the General Permit. The County was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, the County is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed in the tables above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CCAIEJ alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since March 5, 2010, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CCAIEJ alleges that the County has discharged storm water containing impermissible levels of TSS, TOC, iron, and N+N in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit.⁴

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the County is subject to penalties for violations of the General Permit and the Act since March 5, 2010.

⁴ The rain dates in Attachment A are days on which an average of 0.1" or more rain fell as measured by a nearby weather station in Riverside. Data from the weather station is available at http://www.ipm.ucdavis.edu/calludt.cgi/WXDESCRIPTION?STN=UC_RIVER.A (Last accessed on March 5, 2015). The rain dates also include days when the Facility reported a discharge in its Annual Reports.

B. Failure to Develop and Implement an Adequate Monitoring and Reporting Program

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the “quality and quantity of the facility’s storm water discharges from the storm event.”

The above-referenced data was obtained from the Facility’s monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by the County is not representative of the quality of the Facility’s various storm water discharges, and that the Facility failed to monitor all qualifying storm water discharges, CCAEJ alleges that the Facility’s monitoring program violates Sections B(3), (4), (5) and (7) of the General Permit.

On information and belief, CCAEJ alleges that the County failed to sample and analyze storm water discharges from all storm water discharge locations at the Facility during at least the past five wet seasons. On information and belief, CCAEJ alleges that there are at least nine storm water discharge locations at the Facility that discharge directly to the Santa Ana River. However, during the past five wet seasons, the County has only sampled storm water discharges from two locations at the Facility. This failure to comply with Section B(5) at seven discharge locations per year, twice per year, for five years results in at least 70 violations of the General Permit. In addition, the County failed to conduct monthly visual observations during the past five wet seasons at all of these discharge locations in accordance with Section B(4) of the General Permit at seven discharge locations, eight times per year, for five years. This results in at least 280 violations of the General Permit.

In addition, the County’s 2013-2014 Annual Report did not contain any record of any monthly visual observations of storm water discharges at its two reported storm water discharge locations required by Section B(4) of the General Permit. This results in at least 16 violations of the General Permit. The County’s 2013-2014 Annual Report also failed to include quarterly visual observations of both unauthorized and authorized non-storm water discharges as required by Section B(3) of the General Permit. This results in at least 4 violations of the General Permit.

The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the County is subject to penalties for violations of the General Permit and the Act’s monitoring and sampling requirements since March 5, 2010.

C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan

Section A and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).

CCA EJ's investigation of the conditions at the Facility as well as the County's Annual Reports indicate that the County has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. The County has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. The County has been in continuous violation of Section A and Provision E(2) of the General Permit every day since March 5, 2010, at the very latest, and will continue to be in violation every day that the County fails to prepare, implement, review, and update an effective SWPPP. The County is subject to penalties for violations of the Order and the Act occurring since March 5, 2010.

D. Failure to File True and Correct Annual Reports

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

For the last five years, the County and its agents, David Doublet and Arthur Rivera, inaccurately certified in its Annual Reports that the Facility was in compliance with the General Permit. Consequently, the County has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Permit every time the County failed to submit a complete or correct report and every time the County or its agents falsely purported to comply with the Act. The County is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since at least June 29, 2010.

III. Persons Responsible for the Violations.

CCA EJ puts the County on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CCA EJ puts the County on notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of CCA EJ is as follows:

Penny Newman
Executive Director
Center for Community Action and Environmental Justice
P.O. Box 33124
Jurupa Valley, CA 92519
Tel. (951) 360-8451

V. Counsel.

CCA EJ has retained counsel to represent it in this matter. Please direct all communications to:

Michael R. Lozeau
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Lozeau Drury LLP
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Colton Sanitary Landfill
March 5, 2015
Page 15 of 15

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VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects the County to a penalty of up to \$37,500 per day per violation. In addition to civil penalties, CCAEJ will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CCAIEJ believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CCAIEJ intends to file a citizen suit under Section 505(a) of the Act against the County and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CCAIEJ would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CCAIEJ suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CCAIEJ does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Douglas J. Chermak
Lozeau Drury LLP
Attorneys for Center for Community Action and
Environmental Justice

SERVICE LIST

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Jared Blumenfeld, Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA 94105

Kurt V. Berchtold, Acting Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

ATTCHMENT A
Rain Dates, Colton Sanitary Landfill, California

3/6/2010	3/23/2011	2/8/2013
4/5/2010	4/8/2011	2/19/2013
4/12/2010	5/18/2011	3/8/2013
4/20/2010	7/31/2011	5/6/2013
4/22/2010	10/5/2011	10/9/2013
11/8/2010	11/4/2011	11/21/2013
11/20/2010	11/6/2011	12/7/2013
11/21/2010	11/12/2011	2/6/2014
11/24/2010	11/20/2011	2/28/2014
12/5/2010	12/12/2011	3/1/2014
12/6/2010	1/21/2012	4/1/2014
12/16/2010	1/23/2012	4/2/2014
12/18/2010	2/15/2012	4/25/2014
12/19/2010	2/27/2012	8/20/2014
12/20/2010	3/17/2012	11/21/2014
12/21/2010	3/18/2012	12/2/2014
12/22/2010	4/11/2012	12/3/2014
12/25/2010	4/13/2012	12/4/2014
12/29/2010	4/25/2012	12/12/2014
1/2/2011	4/26/2012	12/17/2014
1/3/2011	8/30/2012	12/30/2014
1/30/2011	10/11/2012	1/11/2015
2/16/2011	11/8/2012	1/26/2015
2/18/2011	12/12/2012	2/22/2015
2/19/2011	12/13/2012	2/23/2015
2/25/2011	12/24/2012	3/2/2015
2/26/2011	12/29/2012	
3/20/2011	1/24/2013	
3/21/2011	1/25/2013	

Notice of Violations and Intent to File Suit

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